IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

Crl.MC.No. 403 of 2007()

AGAINST THE ORDER DATED 30/01/2007 IN CMP. 85 /2007 IN CC.1299/2003 of J.F.C.M, KOTHAMANGALAM

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PETITIONER: PETITIONER/IST ACCUSED

K.MANOJ KUMAR,AGED 45 YEARS,
S/O.M.R.KARUNAKARAN NAIR,MANOJ MANDIRAM, AYAKKAD,
TRIKKARIYOOR,KOTHAMANGALAM,NOW RESIDING AT
P&T QUARTER NO.C,COLONYPADY, CHOONDY, ALUVA.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS: RESPONDENTS/STATE & COMPLAINANT

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1. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

2. L.C.SREEKUMAR,S/O.CHELLAPPAN PILLAI,
LAKSHMI VILAS HOUSE, KUROOR KARA, KOTHAMANGALAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.403 of 2007

Dated this the 19th day of February, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the N.I Act. The signature in the cheque is admitted. Notice of demand was returned unclaimed. The complainant tendered evidence. He was cross examined. The accused at the stage of defence examined himself as witness under Section 315 Cr.P.C. He took up a stand that the signed blank cheque had come into possession of the complainant for the purpose of convenience when they were running a partnership business. The said signed cheque in the possession was misutilised by filling the amount and other particulars, it was urged. The accused tendered evidence that he is not responsible for the other entries made in the cheque other than his signature. At the stage of defence, an application has been filed under Section 254(2) Cr.P.C to forward the cheque to the expert for examination.

2. The learned Magistrate took note of the crucial and significant fact that such theory was not advanced and was not suggested to the complainant when he was examined on oath. In these circumstances, the learned Magistrate relying on the decision in **Francis v. Pradeep** [2004(2) KLT 1080] took the stand that the

discretion under Section 254(2) Cr.P.C, does not deserve to be invoked in favour of the petitioner. Accordingly the learned Magistrate proceeded to pass the impugned order.

3. The petitioner claims to be aggrieved by the impugned order. He has come to this Court with a prayer to invoke the powers under Section 482 Cr.P.C to interfere with the impugned order.

4. The impugned order is an interlocutory order. The said order is not amenable to the revisional jurisdiction of this Court in view of the specific bar under Section 397(2) Cr.P.C. But notwithstanding the bar, in an appropriate case where the conscience of the Court is satisfied that failure of justice thereby results, it is open to this Court to invoke the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C. In all other cases, such orders can only wait for its challenge along with final orders to be passed in the prosecution by the learned Magistrate.

5. I do not want to encumber records by expressing any opinion on merits. Suffice it to say that I am not satisfied that this is a fit case where the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C deserves to be invoked against the impugned order.

6. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that the dismissal of this Crl.M.C will not

fetter the rights of the petitioner to challenge the impugned order, if the same is found to be necessary and if so advised along with the final order to be passed by the learned Magistrate.

(R.BASANT, JUDGE)

rtr/-